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Docket No. AUS92001945US1 Serial No. 10/005,680 Atty: AJP

Applicant: BROWN ET AL_____

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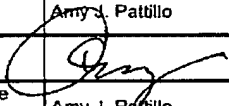U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
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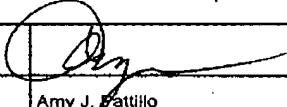
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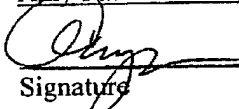
In re application of Brown et al. Serial No.: 10/005,680 Confirmation Number: 9585 Filed: 12/03/2001 Title: HOLD QUEUE POSITION PUBLICATION Docket Number: AUS920010945US1	: Before the Examiner: : Marie Ubiles : Group Art Unit: 2642 : IBM Corporation (AP) : c/o Amy J. Pattillo : P.O. Box 161327 : Austin, Texas 78716

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APPEAL BRIEF UNDER 37 CFR §41.37

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This Appeal Brief is submitted in support of the Appeal in the above-referenced application pursuant to a Notice of Appeal filed January 19, 2006 as required by 37 C.F.R. 41.31. This is an appeal from a final rejection dated October 19, 2005 of Claims 1-2, 4-9, 11-18, and 36-38 of application serial number 10/005,680, filed December 3, 2001.

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Serial No. 10/005,680
Atty Docket No. AUS920010945US1

I. Real Party in Interest

The real party in interest in the present application is the Assignee, International Business Machines Corporation of Armonk, New York, as evidenced by the Assignment set forth at Reel 012361, Frame 0171.

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II. Related Appeals and Interferences

An appeal brief was previously filed in this pending application on February 7, 2005. The Examiner entered the appeal brief filed February 7, 2005 and reopened prosecution of this pending application in an Office Action dated April 22, 2005.

There are no additional Appeals or Interferences known to Appellant, Appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. No decisions have been rendered by a court or the Board in any related applications.

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Serial No. 10/005,680
Atty Docket No. AUS920010945US1

III. Status of Claims

1. Status of All Claims in Application

    a. Claims Rejected: 1, 2, 4-9, 11-18, and 36-38

    b. Claims Allowed or Confirmed: None

    c. Claims Withdrawn from Consideration: None

    d. Claims Objected to: None

    e. Claims Cancelled: 3, 10, and 19-35

2. Claims on Appeal

    a. The claims being appealed are: 1, 2, 4-9, 11-18, and 36-38

    b. The claims being appealed stand finally rejected as noted by the Examiner in the Examiner's Action dated October 19, 2005. These rejected claims which form the basis of this appeal are reproduced in the attached Appendix.

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Serial No. 10/005,680
Atty Docket No. AUS920010945US1

IV. Status of Amendments

In a first final office action, the Examiner finally rejected claims 1, 2, 4-9, and 11-35. Appellants file a notice of appeal on December 8, 2004 appealing the rejection of claims 1, 2, 4-9, and 11-35 and file an appeal brief with the arguments for appeal on 2/7/2005. The Examiner responded to the appeal brief by reopening prosecution in the present application in an Office Action dated April 22, 2005. Appellants filed a response on 7/22/2005, amending claims 1, 4, 5, 7, 8, 11, 12, 14, 15, 16, and 18 and canceling claims 3, 10, 19-35 The Examiner responded with a second final office action, dated October 19, 2005, finally rejecting claims 1, 2, 4-9, and 36-38. No additional amendments were filed after the second final office action.

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Serial No. 10/005,680
Atty Docket No. AUS920010945US1

V. Summary of Claimed Subject Matter

Claim 1 is directed to a method for publishing call queue characteristics (Specification, paragraphs 0015 and 0026). In particular, an on hold system that manages calls waiting on hold also monitors multiple characteristics of the on hold system (Specification, paragraphs 0016 and 0017, Figure 2, elements 12, 33, and 38, Figure 3, element 50). The on hold system detects a selection by a caller currently waiting on hold of a particular format from a menu of multiple available formats for publishing the multiple characteristics (Specification, paragraphs 0016, 0037, and 0067, Figure 6, element 104). In response, the on hold system transfers the multiple characteristics to the caller in the particular format selected by the caller (Specification, paragraphs 0016, 0027, 0068-0070, 0072, Figure 3, element 50, Figure 6, elements 108, 111, and 118).

Claim 2 is directed to the method of claim 1 including a method for monitoring characteristics by monitoring at least one of a current activity status of the on hold system, an estimated activity status of the on hold system, a historical average activity status of said on hold system, and a historical average activity status of at least one current caller on hold within the on hold system. (Specification, paragraphs 0028, 0041, 0042, 0052, Figure 2, elements 39 and 40, Figure 3, element 50).

Claim 4 is directed to the method of claim 1 including a method for detecting a selection by a caller currently waiting on hold of a particular format from a menu of available formats for publishing the multiple characteristics, wherein the selectable menu of the separate formats comprises an audio format, a text format, and a graphical format. (Specification, paragraphs 0027, 0045, 0054, 0067, Figure 3, element 50, Figure 6, element 104).

Claim 5 is directed to the method of claim 1 including a method for prompting the caller via the calling device with a tracking number identifying the call and a particular network address at which the characteristics are accessible responsive to entry of the tracking number, responsive to the selection by the caller of the web site at the particular output interface and enabling the web site at the particular network address to provide output of the characteristics in the particular output format responsive to caller access to the particular network address and entry of the tracking number (Specification, paragraphs 0027, 0038, 0047, 0048, and 0072, Figure 6, elements 114, 116, and 118).

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Claim 6 is directed to the method of claim 1 including a method for monitoring an expected subject matter selection of the multiple calls currently on hold within the on hold system. (Specification, paragraphs 0028 and 0065, Figure 4, element 62, Figure 6, elements 98 and 100).

Claim 7 is directed to the method of claim 1 including a method for filtering a preferred selection from among the characteristics according to output preferences for the caller and only facilitating transfer of the preferred selection from among the characteristics to the caller at the particular output interface for output in the particular format. (Specification, paragraphs 0050, 0051, and 0068).

Claim 36 is directed to the method of claim 1 including a method for prompting the caller via the calling device to enter an identifier for the messaging account, responsive to the selection by the caller of the messaging account at the particular output interface and sending a communication including the characteristics via a network to an account server serving the particular identifier, responsive to caller entry of a particular identifier for the message account. (Specification, paragraphs 0038, 0049, 0070, Figure 1, element 15, Figure 3, element 50, Figure 6, elements 104 and 111).

Claims 8, 9, 11, 12, 13, 14, and 37 are directed to an on hold system with means for performing the elements described in claims 1, 2, 4, 5, 6, 7, and 36. In particular, Figure 2 illustrates an on hold system 12 that includes a controller 30 which provides the means for performing the elements described in claims 1, 2, 4, 5, 6, 7, and 36 (Specification, paragraphs 0039, 0040, and 0041). In addition, on hold system 12 includes a call hold queue 32 for managing multiple calls waiting on hold (Figure 2, elements 12 and 32).

Claims 15, 16, 17, 18, and 38 are directed to a computer program product for performing the steps described in claims 1, 5, 6, 7, and 36. In particular, the specification describes that while the invention is described with reference to a data processing system, the computer readable medium of claims 15, 16, 17, 18, and 38 is taught where the recordings, which are the means for performing the elements of claims 1, 5, 6, 7, and 36 can all be distributed through a "computer readable medium of instructions and a variety of forms" (Specification, paragraph 0073). Examples of a recording medium include:

"recordable-type media, such as a floppy disk, a hard disk drive, a RAM,

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CD-ROMS, DVD-ROMs, and transmission-type media, such as digital
and analog communications links, wired or wireless communications links
using transmission forms, such as, for example, radio frequency and light
wave transmissions" (Specification, paragraph 0073).

In addition, the recording medium may "take the form of coded formats that are decoded

for actual use in a particular data processing system" (Specification, paragraph 0073). In

one example, controller 30 of Figure 2 for controlling the on hold system includes

computer resources, such as a processor, memory, a data storage system, system software

and application software, where the memory, for example, may be a recording medium

recorded with the means described in claims 15, 16, and 18 (Specification, paragraph

0039).

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VI. Grounds of Rejection to be Reviewed on Appeal

1. Claims 1, 2, 4, 5, 8, 9, 11, 12, 15, 16, and 36-38 stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Burg et al. (US Patent 6,738,473) in view of Fawcett et al. (US Patent 5,802,526) and further in view of Bruce et al. (US Patent 6,539,080).

2. Claims 7, 14, and 18 stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Burg et al. (US Patent 6,738,473) in view of Fawcett et al. (US Patent 5,802,526) and further in view of Bruce et al. (US Patent 6,539,080) and Coussement (US Patent Publication 2002/0055967).

3. Claims 6, 13, 17 stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Burg et al. (US Patent 6,738,473) in view of Fawcett et al. (US Patent 5,802,526) and further in view of Bruce et al. (US Patent 6,539,080) and Ginsberg (US Patent 6,064,730).

VII. Argument

1.   35 U.S.C. 103(a), Alleged Obviousness, Claims 1-2, 4, 8-9, 11, 15, and 36-38

The Final Office Action rejects claims 1, 2, 4, 8, 9, 11, 15, and 36-38 under 35

U.S.C. §103(a) as being allegedly unpatentable over Burg et al. (US Patent 6,738,473) in

view of Fawcett et al. (US Patent 5,802,526) and further in view of Bruce et al. (US

Patent 6,539,080). [Final Office Action, dated October 19, 2005, p. 2] The rejection is

respectfully traversed.

Independent method claim 1, which is representative of independent system claim

8 and independent computer program product claim 15, with regard to similarly recited

subject matter and rejection, reads as follows:

> 1.   A method for publishing call queue characteristics comprising:
> monitoring a plurality of characteristics of an on hold system;
> presenting a caller currently waiting on a call within said on hold
> system with a selectable menu of a plurality of separate available formats
> and a plurality of separate available output interfaces for selection by said
> caller for publication of said plurality of characteristics, wherein said
> plurality of separate available output interfaces comprise at least a calling
> device used by said caller to place said call, a web site, and a messaging
> account; and
> responsive to a selection by said caller of a particular format from
> said plurality of separate available formats and a particular output
> interface from said plurality of separate available output interfaces,
> facilitating transfer of said plurality of characteristics to said caller at said
> particular output interface for output in said particular format.

In the rejection of claims 1, 8, and 15, the Examiner states:

> As for claim 1, Burg et al. discloses a method for publishing call queue
> characteristics (see abstract, lines 8-11). While not directly disclosed, it is
> inherent in Burg et al.'s system the monitoring a plurality of
> characteristics of an hold system (as read on providing information such
> as, wait time estimate and queue length including place in queue, based on
> a caller's request) (See col.5, lines 43-48).
> As per the limitation in claim 1 regarding "responsive to a
> selection by a caller currently waiting within said on hold system of a
> particular format from a menu of available formats for publishing said
> plurality of characteristics to said caller in said particular format"; Burg et
> al, teaches the following:
> "If the request [made by the caller] is a wait time estimate, for
> example, the system may provide an estimate of the approximate time of
> waiting until the call may be answered. [...] An example of a status

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message would be "Your call will be served in 5 minutes." The signaling
gateway 460 may prepare a reply packet to the ISP 450 and computer 400
which may include a web page, audio announcement, pop-up window,
etc." (See col. 5, lines 53-56 and 60-65).

It can be see that Burg et al. disclose "responsive to a selection by
a caller currently waiting within said on hold system" (may be read on the
request made by the caller for a wait time estimate).

In regards to the claimed "...presenting a caller concurrently
waiting on a call within said hold system with a selectable menu of a
plurality of separate available formats and a plurality of separate available
output interfaces..." Fawcett et al. teaches that a user/caller to a
call/support center having interactive voice response capabilities allows
the user to choose an option to listen to query responses via voice or via a
visual display. (Col. 2, line 61-col. 3, line 51, col. 7, line 5-col. 8, line 58
of Fawcett et al.) Note that because Fawcett et al. teaches the ability to
present information using either both audio and visual means, it is inherent
that there are a plurality of output interfaces, even if both means are
ultimately outputted to the same computer or device.

It would have been obvious to one of ordinary skill in the art at the
time the invention was made to have modified the invention of Burg et al.
with the invention of Fawcett et al. inasmuch as Fawcett et al. notes the
motivation for the ability to present information to a call center caller in
both audio and visual formats, i.e. menus are sometimes easier to traverse
using visual means, or alternatively, visual means may not be adequate to
address a caller's needs. (Col. 2, lines 21-52, col. 4, lines 4-18 of Fawcett
et al.). Note that while Burg et al. teaches presenting queue information
and Fawcett et al. teaches presenting response information, the notion of
the ability to choose how information is to be presented to a caller is of
ultimate import. Both Burg et al. and Fawcett et al. teach presenting
certain information to a caller. Because Burg et al. already must know
queue information as directed above, it would simply be a trivial matter of
applying the presentation options Fawcett et al. applies to responses to the
queue information of Burg et al. The queue information is arguably
information just like the response information from the system
perspective.

In regards to the claimed "... comprise at least a calling device
used by said caller to place said call, a website, and a messaging
account..." Bruce et al. teaches the ability to present caller-requested
information using live voice, synthesized voice, interactive voice, over a
telephone or calling device, or alternatively using a voice mail message,
email, pager, or personal digital assistant means. (Col. 2, line 44-col. 3,
line 12, col. 5, lines 34-52, col. 8, line 38-col. 11, line 12 of Bruce et al.)

Therefore, it would have been obvious for one of ordinary skill in
the art at the time the invention was made to have expanded the
capabilities of Burg and Fawcett to include the message means taught by
Bruce inasmuch as Fawcett already contemplates at least some type of

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Internet/data communications which arguably encompasses or at least
provides the requisite capability for email messaging and Burg also
teaches the ability to ask for a change in communication modes using
email or other messaging means. (Col. 2, lines 7-21 of Burg et al., and
Col. 12, line 45-col. 15, line 16 of Fawcett et al.) [Office Action, pp. 2-4]

The Examiner carries the burden of proving a prima facie case of obviousness for a
103(a) rejection. Appellants respectfully assert that the Examiner does not carry the
burden of proving a prima facie case of obviousness as to 1, 8, and 15 for the following
reasons.

**Burg et al., Fawcett et al., and Bruce et al., separately or in combination, do not
teach or suggest all of the claim limitations of claims 1, 8, and 15**

In establishing a prima facie case of obviousness under 103(a), the combined
prior art references must teach or suggest all the claim limitations. *In re Vaeck*, 947 F.3d
488, 20 USPQ2d 1438 (Fed Cir. 1991). In particular, in determining the differences
between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the
differences themselves would have been obvious, but whether the claimed invention as a
whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218
USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698
(Fed. Cir. 1983). Appellants respectfully note that the Examiner does not show, nor do
the references teach or suggest, separately or in combination, each of the elements of
claims 1, 8, and 15.

First, Appellants respectfully assert that Burg et al., Fawcett et al. and Bruce et al.,
separately or in combination, do not teach or suggest presenting a caller currently waiting
on a call within said on hold system with a selectable menu of a plurality of separate
available formats and a plurality of separate available output interfaces for selection by
said caller for publication of said plurality of characteristics, wherein said plurality of
separate available output interfaces comprise at least a calling device used by said caller
to place said call, a web site, and a messaging account because Fawcett et al. does not
teach or suggest a selectable menu of both multiple separate available formats and
multiple separate available output interfaces.

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The Examiner cites Fawcett et al. as disclosing the element of <u>presenting a caller</u> <u>concurrently waiting on a call within said hold system with a selectable menu of a</u> <u>plurality of separate available formats and a plurality of separate available output</u> <u>interfaces</u>. In particular, the Examiner cites Fawcett et al. as disclosing the element in col. 2, line 61-col. 3, line 51, col. 7, line 5-col. 8, line 58 and in the description that "a user/caller to a call/support center having interactive voice response capabilities allows the user to choose an option to listen to query responses via voice or via a visual display." [Office Action, p. 3] Further, the Examiner states that "because Fawcett et al. teaches the ability to present information using either or both audio and visual means, it is inherent that there are a plurality of output interfaces, even if both means are ultimately output to the same computer or device." [Office Action, p. 3]

Appellants respectfully assert that when claims 1, 8, and 15 are viewed as a whole, however, because the limitations teach a menu including both selectable format options and selection output interface options, the claims teach that a format is separately selected from an output interface. For example, Appellants respectfully assert that the menu provides both a selection of a format, such as "audio", and separately a selection of a particular output interface for controlling output of the audio formatted characteristics. What Fawcett et al. discloses, however, and what the Examiner states is that a user can select from multiple formats for delivery of the IVRU information – either voice or audio – but the data for either selection is delivered to the same computer or device. *Fawcett et al.*, col. 2, line 61-col. 3, line 51, col. 7, line 5-col. 8, line 58. Thus, Fawcett et al. does not teach or suggest a menu that includes both multiple separate available formats and multiple separate available output interfaces. Further, Fawcett et al. does not teach or suggest a user separately selecting both a format option and an output interface option.

In addition, Appellants respectfully assert that when claims 1, 8, and 15 are viewed as a whole, claims 1, 8, and 15 teach multiple separate output interfaces that are not merely peripheral units of a computer system, but include the calling device, a web site, and a messaging account. Therefore, regardless of whether the Examiner's statement that "because Fawcett et al. teaches the ability to present information using either or both audio and visual means, it is inherent that there are a plurality of output interfaces, even if both means are ultimately output to the same computer or device"

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(Office Action , p. 3), the Examiner still does not point out, nor does Fawcett et al. teach or suggests a menu with multiple output interface selections, separately selectable from the multiple format options, where the output interface selections extend beyond the peripheral output interfaces of a computer system.

Second, Appellants respectfully assert that Burg et al., Fawcett et al. and Bruce et al., separately or in combination, do not teach or suggest <u>presenting a caller currently waiting on a call within said on hold system with a selectable menu of a plurality of separate available formats and a plurality of separate available output interfaces for selection by said caller for publication of said plurality of characteristics, wherein said plurality of separate available output interfaces comprise at least a calling device used by said caller to place said call, a web site, and a messaging account</u> because Burg et al. and Fawcett et al. in combination do not teach or suggest a selectable menu of both multiple separate available formats and multiple separate available output interfaces. The Examiner states, regarding the combination of Burg et al. and Fawcett et al.:

> It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the invention of Burg et al. with the invention of Fawcett et al. inasmuch as Fawcett et al. notes the motivation for the ability to present information to a call center caller in both audio and visual formats, i.e. menus are sometimes easier to traverse using visual means, or alternatively, visual means may not be adequate to address a caller's needs. (Col. 2, lines 21-52, col. 4, lines 4-18 of Fawcett et al.). Note that while Burge et al. teaches presenting queue information and Fawcett et al. teaches presenting response information, the notion of the ability to choose how information is to be presented to a caller is of ultimate import. Both Burg et al. and Fawcett et al. teach presenting certain information to a caller. Because Burg et al. already must know queue information as directed above, it would simply be a trivial matter of applying the presentation options Fawcett et al. applies to responses to the queue information of Burg et al. The queue information is arguably information just like the response information from the system perspective. [Office Action, pp. 3-4]

Burg et al. describes that a caller may place a call over a PSTN network using a telephone or over a Voice-over-Internet Protocol (VoIP) network using a computer. *Burg et al.*, col. 2, lines 43-49, 54-61. Burg et al. describes that a caller may request information, such as a wait time estimate, and that if the request is received from a

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computer through a VoIP network, then a status message is prepared and returned to the requesting computer. *Burg et al.*, col. 5, lines 43-46, 53-65. Thus, Burg et al. does not teach or suggest returning a wait time estimate to any system other than the requesting system. Therefore, Burg et al. does not teach or suggest providing a selectable menu of multiple formats and multiple output interfaces to the user.

As previously asserted, Fawcett et al. does not teach or suggest, expressly or inherently, presenting a caller with a selectable menu of both multiple formats and multiple output interfaces for output of the characteristics. The Examiner states that both Burg et al. and Fawcett et al. teach "presenting certain information to a caller." [Office Action, p. 4] However, Appellants respectfully assert that regardless of whether Burg et al. and Fawcett et al. both teach "presenting certain information to a caller", neither Burg et al. nor Fawcett et al. teaches presenting a caller with a selectable menu of both multiple separate available formats and multiple separate available output interface for selection from by the caller for publication of the characteristics.

Third, Appellants respectfully assert that Burg et al., Fawcett et al. and Bruce et al., separately or in combination, do not teach or suggest <u>presenting a caller currently</u> <u>waiting on a call within said on hold system with a selectable menu of a plurality of</u> <u>separate available formats and a plurality of separate available output interfaces for</u> <u>selection by said caller for publication of said plurality of characteristics, wherein said</u> <u>plurality of separate available output interfaces comprise at least a calling device used by</u> <u>said caller to place said call, a web site, and a messaging account</u> because Burg et al., Fawcett et al., and Bruce et al., separately or in combination, do not teach or suggest the selectable menu of multiple separate available output interfaces including at least a calling device used by the caller to place the call, a web site, and a messaging account.

The Examiner cites Bruce et al. as describing "the ability to present caller-requested information using live voice, synthesized voice, interactive voice, over a telephone or calling device, or alternatively using a voice mail message, email, pager, or personal digital assistant means" in Bruce et al., col. 2, line 44-col. 3, line 12, col. 5, lines 34-52, col. 8, line 38-col. 11, line 12. Appellants note that Bruce et al. describes a system that "allows telephone callers to place a telephone call to a telephone number to obtain information and assistance in locating selected destination locations and obtain step-by-

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step driving directions to reach the selection destination over the telephone." *Bruce et al.*, col. 2, lines 23-28. In addition, Bruce et al. describes that "the route instructions can be communicated directly over the telephone from an interactive voice response system, a live operator, a synthesized voice, a voice mail message, and Internet electronic mail, an alpha/numeric pager or telephone or a Personal Digital Assistant ("PDA"). *Bruce et al.*, col. 2, lines 57-63. Appellants note that the sentence construction of Bruce et al., col. 2, lines 57-63 is unclear and that telephone is listed twice. The Examiner interprets the sentence to read "using live voice, synthesized voice, interactive voice, over a telephone or calling device, or alternatively using a voice mail message, email, pager, or personal digital assistant means." [Office Action, p. 4] Regardless of whether this interpretation is correct, Appellants submit that what is clear is that Bruce et al. describes sending driving instructions over the telephone, an alpha/number pager or a PDA. Appellants submit, however, that when Bruce et al. is viewed as a whole (and in particular in view of view of col. 5, lines 17-52, col. 8, lines 38-60, and col. 10, lines 7-26), it is also clear that col. 2, lines 57-63 disclose (1) a user may trigger the driving assistance system from telephony based systems via a telephone network and computer systems via the Internet; (2) the driving assistance system is able to communicate the driving directions to the triggering telephone or computer system through a live operator, voice translated from text, or text; (3) however, regardless of the format of the directions the driving assistance system still communicates the directions to the requesting system. Thus, Bruce et al., like Burg et al. and Fawcett et al., when considered as a whole, describes an interactive service where the information, although deliverable by the interactive service in different formats, is still delivered to and output from the requesting system. In addition, Appellants respectfully assert that regardless of whether the mention of Internet electronic mail in Bruce et al. discloses communicating information via electronic mail, Bruce et al. does not teach providing a caller with a menu of selectable output interface options that includes a messaging account. In addition, Bruce et al. further does not teach providing a caller with a menu of selectable output interface options including each of the calling device used by the caller to place the call *and* a web site *and* a messaging account. In contrast, claims 1, 8, and 15, when each viewed as a whole, teach presenting a caller

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with a menu of multiple separate selectable output interface options including at least a calling device used by the caller to place the call, a web site, and a messaging account.

There is no suggestion or motivation to modify Burg et al., Fawcett et al. and Bruce et al.

To establish a prima facie case of obviousness, there must be a suggestion or motivation to modify the reference. *In re Vaeck*, 947 F.3d 488, 20 USPQ2d 1438, 1442 (Fed Cir. 1991). The suggestion or motivation to modify Burg et al. by Fawcett et al. and Bruce et al. must come from the teachings the references, and the examiner must explicitly point to the teaching within the reference suggesting the proposed modification. Absent such a showing, the Examiner has impermissibly used "hindsight" occasioned by Appellants' own teaching to reject the claims. *In re Surko*, 11 F.3d 887, 42 USPQ2d 1476 (Fed. Cir. 1997); *In re Vaeck*, 947 F.3d 488, 20 USPQ2d 1438 (Fed Cir. 1991); *In re Gorman*, 933 F.2d 982, 986, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991); *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990); *In re Laskowski*, 871 F.2d 115, 117, 10 USPQ2d 1397, 1398 (Fed. Cir. 1989). Appellants respectfully assert that there is no motivation to modify Burg et al. by Fawcett et al. and Bruce et al. because the modification is merely a loose piecing together of references based on "hindsight" and not based in the teachings of the references.

First, Appellants respectfully assert that there is no suggestion or motivation to modify Burg et al. by Fawcett et al. to teach presenting a caller currently waiting on a call within said on hold system with a selectable menu of a plurality of separate available formats and a plurality of separate available output interfaces for selection by said caller for publication of said plurality of characteristics. The Examiner states, regarding the combination of Burg et al. and Bruce et al.:

> It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the invention of Burg et al. with the invention of Fawcett et al. inasmuch as Fawcett et al. notes the motivation for the ability to present information to a call center caller in both audio and visual formats, i.e. menus are sometimes easier to traverse using visual means, or alternatively, visual means may not be adequate to address a caller's needs. (Col. 2, lines 21-52, col. 4, lines 4-18 of Fawcett et al.). Note that while Burg et al. teaches presenting queue information and Fawcett et al. teaches presenting response information, the notion of

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> the ability to choose how information is to be presented to a caller is of
> ultimate import. Both Burg et al. and Fawcett et al. teach presenting
> certain information to a caller. Because Burg et al. already must know
> queue information as directed above, it would simply be a trivial matter of
> applying the presentation options Fawcett et al. applies to responses to the
> queue information of Burg et al. The queue information is arguably
> information just like the response information from the system
> perspective. [Office Action, pp. 3-4]

In addition, the Examiner asserts that "because Fawcett et al. teaches the ability to present information using either both audio and visual means, it is inherent that there are a plurality of output interfaces, even if both means are ultimately outputted to the same computer or device." [Office Action, p. 3]

Appellants respectfully assert that the Examiner's multiple modifications of Fawcett et al. to describe the elements missing from Burg et al., without a statement of the motivation in either Burg et al. or Fawcett et al. for making such modifications, show that the modifications are based on hindsight and not the references themselves. First, in the statement that "it is inherent that there are a plurality of output interfaces" (Office Action, p. 3), the Examiner modifies Fawcett et al.'s description of providing information to a caller in both audio and visual formats via multiple peripherals of a telephone system to disclose providing information to a caller at multiple output interfaces. Second, the Examiner then modifies the modification of Fawcett et al. to further disclose providing the caller with a menu of both multiple selectable output formation options and multiple selectable output interface options. In the statement of the motivation behind the proposed modification of Burg et al. by Fawcett et al., however, the Examiner only refers to "presenting information to a call center caller in both audio and visual formats." [Office Action, p. 3] Further, there is no statement by the Examiner or found in Burg et al. or Fawcett et al. for modifying either Fawcett et al. or Burg et al. to teach presenting the caller with a menu that provides for selection of both the output format and the output interface. Moreover, Appellants assert Fawcett et al. teaches against such a modification, particularly as cited by the Examiner, because Fawcett et al. automatically associates the speaker of a telephone to an audio format and a display of a telephone to the text format.

Second, Appellants respectfully assert that there is no suggestion or motivation to modify Burg et al. by Fawcett et al. to teach presenting a caller currently waiting on a call

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within said on hold system with a selectable menu of a plurality of separate available formats and a plurality of separate available output interfaces for selection by said caller for publication of said plurality of characteristics, wherein said plurality of separate available output interfaces comprise at least a calling device used by said caller to place said call, a web site, and a messaging account. The Examiner states, regarding the combination of Burg et al., Fawcett et al., and Bruce et al.:

> Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to have expanded the capabilities of Burg and Fawcett to include the message means taught by Bruce inasmuch as Fawcett already contemplates at least some type of Internet/data communications which arguably encompasses or at least provides the requisite capability for email messaging and Burg also teaches the ability to ask for a change in communication modes using email or other messaging means. (Col. 2, lines 7-21 of Burg et al., and Col. 12, line 45-col. 15, line 16 of Fawcett et al.) [Office Action, p. 4]

As already noted, there is no suggestion or motivation to modify Fawcett et al. and then to modify Burg et al. by Fawcett et al., however, there even if there were motivation for the modification, there is no motivation or suggestion to modify Burg et al. and Fawcett et al. by Bruce et al. to teach the selectable menu of multiple separate available output interfaces wherein said plurality of separate available output interfaces comprise at least a calling device used by said caller to place said call, a web site, and a messaging account.

Appellants respectfully assert that merely because Burg et al., Fawcett et al. and Bruce et al. each include a reference to the Internet or email messaging, the combination of Burg et al., Fawcett et al. and Bruce et al. does not teach presenting the caller with a selectable menu of multiple selectable output interfaces that include at least the calling device used to place the call, a web site, and a messaging account. Burg et al., col. 2, lines 7-21 describe all the requests that a caller may make while waiting on hold, including "a request for a change in communication mechanism such that the caller may record a voice mail message, send an e-mail, send a page, or send a fax." (col. 2, lines 15-18). Fawcett et al., col. 12, line 45-col. 15, line 16, describes an embodiment of an interactive voice response system that creates the interactive menus provided to the caller using HTML. Bruce et al. describes the ability to provide navigational data at different systems, including computer systems over the Internet, however, Appellants continue to

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submit that Bruce et al., col. 2, line 44-col. 3, line 12, col. 5, lines 34-52, and col. 8, line 38-col. 11, line 12 still only describe returning the data to the requesting system. Regardless, Appellants respectfully assert that while each of the systems reference some type of network communication, piecing together references that refer to network communication does not suggest or motivate modification of each of the references to teach claims 1, 8, and 15 as a whole, which includes the limitation of presenting the caller with a selectable menu of multiple separate output interfaces including at least a calling device, a website and a messaging account.

In conclusion, Appellants respectfully assert that because Burg et al., Fawcett et al. and Bruce et al., separately or in combination, do not teach or suggest each of the elements of claims 1, 8, and 15, and further there is no motivation or suggestion for modifying Burg et al., Fawcett et al., and Bruce et al. to teach each of the elements of claims 1, 8, and 15, a prima facie case of obviousness under 103(a) is not established for claims 1, 8, and 15. Because a prima facie case of obviousness under 103(a) is not established for the claims 1, 8, and 15, Appellants respectfully request allowance of claims 1, 8, and 15.

In addition, because prima facie obviousness is not established for claims 1, 8, and 15, at least by virtue of their dependency on claims 1, 8, and 15, the teaching of Burg et al. do not make the features of dependent claims 2, 4, 9, 11, and 36-38 obvious under 35 U.S.C. §103(a).

2.   35 U.S.C. 103(a), Alleged Obviousness, Claims 5, 12, and 16

The Final Office Action rejects claims 5, 12, and 16 under 35 U.S.C. §103(a) as being allegedly unpatentable over Burg et al. (US Patent 6,738,473) in view of Fawcett et al. (US Patent 5,802,526) and further in view of Bruce et al. (US Patent 6,539,080). [Final Office Action, dated October 19, 2005, p. 2] The rejection is respectfully traversed.

The Examiner states a single ground of rejection of claims 5, 12, 16, and 36-38:

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Such is inherent because in order to message using for example, email, an email address must be known so that the email may be sent to the correct recipient. The same is true for any data communications. As discussed in Fawcett et al, in order for communication using the Internet, an IP address must be identified whether manually input or automatically determined. See again the above-referenced portions of Fawcett et al. [Office Action, p. 5]

The Examiner carries the burden of proving a prima facie case of obviousness for a 103(a) rejection. Appellants respectfully assert that the Examiner does not carry the burden of proving a prima facie case of obviousness as to 5, 12, and 16 for the following reasons.

Dependent method claim 5, which is representative of dependent system claim 12 and dependent computer program product claim 16, with regard to similarly recited subject matter and rejection, reads as follows:

5.   The method for publishing call queue characteristics according to claim 1, wherein facilitating transfer of said plurality of characteristics further comprises:
      responsive to said selection by said caller of said web site as said particular output interface, prompting said caller via said calling device with a tracking number identifying said call and a particular network address at which said plurality of characteristics are accessible responsive to entry of said tracking number; and
      enabling said web site at said particular network address to provide output of said plurality of characteristics in said particular output format responsive to caller access to said particular network address and entry of said tracking number.

In establishing a prima facie case of obviousness under 103(a), the combined prior art references must teach or suggest all the claim limitations. *In re Vaeck*, 947 F.3d 488, 20 USPQ2d 1438 (Fed Cir. 1991). In particular, in determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983). Appellants respectfully note that the Examiner does not show, nor do the references teach or suggest, separately or in combination, each of the elements of claims 5, 12, and 16.

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Appellants respectfully assert that regardless of whether the Examiner's statement that it "is inherent because in order to message using for example, email, an email address must be known so that the email may be sent to the correct recipient. The same is true for any data communications. As discussed in Fawcett et al, in order for communication using the Internet, an IP address must be identified whether manually input or automatically determined" claims 5, 12, and 16 do not merely teach identifying an IP address. Claims 5, 12, and 16 teach presenting the caller waiting on hold with multiple format options and multiple output interface options and then, if the user selects a web site option, (1) prompting the caller via the calling device with the tracking number and website for accessing the information and (2) enabling the web site to provide the characteristics responsive to entry of the tracking number at the accessed web site. Fawcett, and in particular the portions previously cited by the Examiner in col. 2, lines 21-col. 3, line 51, col. 4, lines 4-18, col. 7, line 5-col. 8, line 58, col. 12, line 45-col. 15, line 16, do not teach or suggest prompting a caller with both a website address and a tracking number or enabling a website to provide information responsive to the user entering the tracking number at the accessed web site. Further, neither of Burg et al. or Bruce et al., or the combination of Burg et al., Fawcett, and Bruce et al. teaches or suggests prompting a caller with both a website address and a tracking number or enabling a website to provide information responsive to the user entering the tracking number at the accessed web site. Therefore, because Burg et al, Fawcett, and Bruce et al. fail to teach or suggest at least one element of claims 5, 12, and 16, a prima facie case of obviousness is not established and the claims should be allowed.

3.   **35 U.S.C. 103(a), Alleged Obviousness, Claims 7, 14, and 18**

The Final Office Action rejects claims 7, 14, and 18 under 35 U.S.C. §103(a) as being allegedly unpatentable over Burg et al. (US Patent 6,738,473) in view of Fawcett et al. (US Patent 5,802,526) and further in view of Bruce et al. (US Patent 6,539,080) and Coussement (US Patent Publication 2002/0055967). [Final Office Action, p. 6] The rejection is respectfully traversed.

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Dependent method claim 7, which is representative of dependent system claim 14 and dependent computer program product claim 18, with regard to similarly recited subject matter and rejection, reads as follows:

> 7.   The method for publishing call queue characteristics according to claim 1, further comprising:
> filtering a preferred selection from among said plurality of characteristics according to output preferences for said caller; and
> only facilitating transfer of said preferred selection from among said plurality of characteristics to said caller at said particular output interface for output in said particular format.

The Examiner carries the burden of proving a prima facie case of obviousness for a 103(a) rejection. In establishing a prima facie case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *In re Vaeck*, 947 F.3d 488, 20 USPQ2d 1438 (Fed Cir. 1991). Appellants respectfully assert that because there is no motivation or suggestion to modify Burg et al. by Fawcett and Bruce et al., with respect to claims 1, 8, and 15, upon which claims 7, 14, and 18 depend, there is also no motivation or suggestion to further modify Burg et al., Fawcett and Bruce et al. by Coussement to teach each and every element of claims 7, 14, and 18. In addition, Applicants respectfully assert that the there is no motivation or suggestion for the proposed modification of Burg et al., Fawcett and Bruce et al. by Coussement.

The Examiner states that "Coussement teaches Web Presence Software (WPS 16) enhanced with a filtering capability of filtering status information that closely matches a user request (or output preferences for said caller) (See Description of the Preferred Embodiments, P 0061, lines 1-5). It would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the above-discussed combination as per the teachings of Coussement; and thus in this manner provide a system that will save phone costs of customers (or callers) as well as reducing utilization requirements of communication center interface technologies." [Office Action, p. 6] Applicants note that Coussement teaches a system where a customer logs on to the Internet, navigates a webpage hosted by a call center service, inputs an intent or reasons for potentially calling

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the call center, and submits the information to the call center (Coussement, paragraph 0071, Fig. 3). In response, the call center service estimates wait times for the caller and returns the estimated data, via a web page interface, to the device through which the user has logged on to view the web page. (Coussement, 0073, Fig. 3). Where Coussement teaches integrating communication-center status information in a customer's electronic interface served upon customer's request, when read as a whole, Coussement teaches transferring status information via a web page interface to the computer system through which a user is logged onto the Internet, responsive to a request by the user via the web page for the status information. Thus, Coussement, when viewed as a whole, provides a web page interface through which a user not yet waiting in a hold queue can access hold queue information; Coussement teaches transferring hold system statistics via a web page to a non-caller, not to a caller.

In contrast, when the present invention is viewed as a whole, including the elements of claim 1, characteristics of an on hold system are transferred to a caller selected output interface in a caller selected format while the caller is on hold in the hold system. Of Burg et al., Fawcett and Bruce et al., only Burg et al. disclosing providing information to a caller waiting on hold. Because Coussement teaches a non-caller web page interface and Burg et al. teaches a current on hold caller telephone interface, neither reference suggests a motivation for combination with the other. In addition, Appellants respectfully assert that the motivation cited by the Examiner, "to provide a system that will save phone costs for customers (or callers) as well as reducing utilization requirements of communication center interface technologies", does not indicate a motivation for combining Coussement in view of Burg et al. to teach <u>filtering a preferred selection from among said plurality of characteristics according to output preferences for said caller</u> and <u>only facilitating transfer of said preferred selection from among said plurality of characteristics to said caller at said particular output interface for output in said particular format</u> where "said caller" is on hold. Because there is no motivation to combine Burg et al. and Coussement, a prima facie case of obviousness under 103(a) is not established for claims 7, 14, and 18. Because a prima facie case of obviousness under 103(a) is not established for claim 7, 14, 18, Appellants respectfully request allowance of claims 7, 14, and 18.

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4.   35 U.S.C. 103(a), Alleged Obviousness, Claims 6, 13, and 17

The Final Office Action rejects claims 6, 13, and 17 under 35 U.S.C. §103(a) as being allegedly unpatentable over Burg et al. (US Patent 6,738,473) in view of Fawcett et al. (US Patent 5,802,526) and further in view of Bruce et al. (US Patent 6,539,080) and Ginsberg (US Patent 6,064,730). [Office Action, p. 7] Claims 6, 13, and 17 are dependent claims of independent method, system, and program claims 1, 8, and 15, respectively. Appellants respectfully assert that because prima facie obviousness is not established for claims 1, 8, and 15 under Burg et al., Fawcett and Bruce, at least by virtue of their dependency on claims 1, 8, and 15, the teachings of Burg et al., Fawcett, and Bruce further in view of Ginsberg do not make the features of dependent claims 6, 13, and 17 obvious under 35 U.S.C. §103(a).

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CONCLUSION

It is therefore respectfully requested that the Examiner's rejection of claims 1, 2, 4-9, 11-18, and 36-38 under 35 USC 103(a) be reversed and the claims allowed.

Please charge the fee of $500.00 for submission of an Appeal Brief under 37 CFR 41.20(b)(2) to IBM Corporation Deposit Account No. 09-0447. No additional filing fee is believed to be necessary; however, in the event that any additional fee is required, please charge it to IBM Corporation Deposit Account No. 09-0447.

Respectfully submitted,

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VIII. Claims Appendix

The Claims involved in the Appeal are as follows:

1.   A method for publishing call queue characteristics comprising:

monitoring a plurality of characteristics of an on hold system;

presenting a caller currently waiting on a call within said on hold system with a selectable menu of a plurality of separate available formats and a plurality of separate available output interfaces for selection by said caller for publication of said plurality of characteristics, wherein said plurality of separate available output interfaces comprise at least a calling device used by said caller to place said call, a web site, and a messaging account; and

responsive to a selection by said caller of a particular format from said plurality of separate available formats and a particular output interface from said plurality of separate available output interfaces, facilitating transfer of said plurality of characteristics to said caller at said particular output interface for output in said particular format.

2.   The method for publishing call queue characteristics according to claim 1, wherein monitoring a plurality of characteristics further comprises:

monitoring at least one from among a current activity status of said on hold system, an estimated activity status of said on hold system, a historical average activity status of said on hold system, and a historical average activity status of at least one current caller on hold within said on hold system.

4.   The method for publishing call queue characteristics according to claim 1, wherein said selectable menu of said plurality of separate formats for publishing said plurality of characteristics further comprises an audio format, a text format, and a graphical format.

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5.   The method for publishing call queue characteristics according to claim 1, wherein facilitating transfer of said plurality of characteristics further comprises:

responsive to said selection by said caller of said web site as said particular output interface, prompting said caller via said calling device with a tracking number identifying said call and a particular network address at which said plurality of characteristics are accessible responsive to entry of said tracking number; and

enabling said web site at said particular network address to provide output of said plurality of characteristics in said particular output format responsive to caller access to said particular network address and entry of said tracking number.

6.   The method for publishing call queue characteristics according to claim 1, wherein monitoring a plurality of characteristics further comprises:

monitoring an expected subject matter selection of a plurality of calls currently on hold within said on hold system.

7.   The method for publishing call queue characteristics according to claim 1, further comprising:

filtering a preferred selection from among said plurality of characteristics according to output preferences for said caller; and

only facilitating transfer of said preferred selection from among said plurality of characteristics to said caller at said particular output interface for output in said particular format.

8.   A system for publishing call queue characteristics comprising:

an on hold system for managing a plurality of calls waiting on hold;

means for monitoring a plurality of characteristics of said on hold system;

means for presenting a caller currently waiting on a call within said on hold system with a selectable menu of a plurality of separate available formats and a plurality of separate available output interfaces for selection by said caller for publication of said plurality of characteristics, wherein said plurality of separate available output interfaces comprise at least a calling device used by said caller to place said call, a web site, and a messaging account; and

means, responsive to a selection by said caller of a particular format from said plurality of separate available formats and a particular output interface from said plurality of separate available output interfaces, for facilitating transfer of said plurality of characteristics to said caller at said particular output interface for output in said particular format.

9.   The system for publishing call queue characteristics according to claim 8, wherein said means for monitoring a plurality of characteristics further comprises:

means for monitoring at least one from among a current activity status of said on hold system, an estimated activity status of said on hold system, a historical average activity status of said on hold system, and a historical average activity status of at least one current caller on hold within said on hold system.

11.   The system for publishing call queue characteristics according to claim 8, wherein said selectable menu of said plurality of separate formats for publishing said plurality of characteristics further comprises an audio format, a text format, and a graphical format.

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12. The system for publishing call queue characteristics according to claim 8, wherein said means for facilitating transfer of said plurality of characteristics further comprises:

means, responsive to said selection by said caller of said web site as said particular output interface, for prompting said caller via said calling device with a tracking number identifying said call and a particular network address at which said plurality of characteristics are accessible responsive to entry of said tracking number; and

means for enabling said web site at said particular network address to provide output of said plurality of characteristics in said particular output format responsive to caller access to said particular network address and entry of said tracking number.

13. The system for publishing call queue characteristics according to claim 8, wherein said means for monitoring a plurality of characteristics further comprises:

means for monitoring an expected subject matter selection of said plurality of calls currently on hold within said on hold system.

14. The system for publishing call queue characteristics according to claim 8, further comprising:

means for filtering a preferred selection from among said plurality of characteristics according to output preferences for said particular caller; and

means for only facilitating transfer of said preferred selection from among said plurality of characteristics to said caller at said particular output interface for output in said particular format.

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15.   A computer program product for publishing call queue characteristics, said computer program product comprising:

a recording medium;

means, recorded on said recording medium, for monitoring a plurality of characteristics of an on hold system;

means, recorded on said recording medium, for presenting a caller currently waiting on a call within said on hold system with a selectable menu of a plurality of separate available formats and a plurality of separate available output interfaces for selection by said caller for publication of said plurality of characteristics, wherein said plurality of separate available output interfaces comprise at least a calling device used by said caller to place said call, a web site, and a messaging account; and

means, recorded on said recording medium, responsive to a selection by said caller of a particular format from said plurality of separate available formats and a particular output interface from said plurality of separate available output interfaces, for enabling transfer of said plurality of characteristics to a particular caller at said particular output interface for output in said particular format specified by said particular caller.

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16.   The computer program product for publishing call queue characteristics according to claim 15, wherein said means for enabling transfer of said plurality of characteristics further comprises:

means, recorded on said recording medium, for, responsive to said selection by said caller of said web site as said particular output interface, prompting said caller via said calling device with a tracking number identifying said call and a particular network address at which said plurality of characteristics are accessible responsive to entry of said tracking number; and

means, recorded on said recording medium, for enabling said web site at said particular network address to provide output of said plurality of characteristics in said particular output format responsive to caller access to said particular network address and entry of said tracking number.

17.   The computer program product for publishing call queue characteristics according to claim 15, wherein said means for monitoring a plurality of characteristics further comprises:

means, recorded on said recording medium, for monitoring an expected subject matter selection of said plurality of calls currently on hold within said hold system.

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18.   The computer program product for publishing call queue characteristics according to claim 15, further comprising:

means, recorded on said recording medium, for filtering a preferred selection from among said plurality of characteristics according to output preferences for said particular caller; and

means, recorded on said recording medium, for only facilitating transfer of said preferred selection from among said plurality of characteristics to said caller at said particular output interface for output in said particular format.

36.   The method for publishing call queue characteristics according to claim 1, wherein facilitating transfer of said plurality of characteristics further comprises:
responsive to said selection by said caller of said messaging account as said particular output interface, prompting said caller via said calling device to enter an identifier for said messaging account; and
responsive to caller entry of a particular identifier for said messaging account, sending a communication including said plurality of characteristics via a network to an account server serving said particular identifier.

37.   The system for publishing call queue characteristics according to claim 8, wherein said means for facilitating transfer of said plurality of characteristics further comprises:
means, responsive to said selection by said caller of said messaging account as said particular output interface, for prompting said caller via said calling device to enter an identifier for said messaging account; and
means, responsive to caller entry of a particular identifier for said messaging account, for sending a communication including said plurality of characteristics via a network to an account server serving said particular identifier.

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38.   The computer program product for publishing call queue characteristics according to claim 15, further comprising,

means, recorded on said recording medium, for prompting said caller via said calling device to enter an identifier for a messaging account, responsive to said selection by said caller of said messaging account as said particular output interface; and

means, recorded on said recording medium, for sending a communication including said plurality of characteristics via a network to an account server serving a . particular identifier, responsive to caller entry of said particular identifier for said messaging account.

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IX. Evidence Appendix

There is no evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 or any other evidence entered by the Examiner that is relied upon by Appellants in the appeal.

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X. Related Proceedings Appendix

There are no decisions rendered by a court or the Board in any related appeals.

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